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**Jet-R Construction, Inc. and Michelle L. Stumne-Rovick.** Case 18–CA–16829

September 26, 2003

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Michelle L. Stumne-Rovick on April 21, 2003, the General Counsel issued the complaint on July 29, 2003, against Jet-R Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On September 5, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On September 9, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by August 12, 2003, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 12, 2003, notified the Respondent that unless an answer was received by August 19, 2003, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer,<sup>1</sup> we grant the General Counsel's Motion for Default Judgment.

<sup>1</sup> Copies of the complaint were sent by first class and certified mail to both the Respondent's place of business and the Respondent's registered address. All copies were returned by the Postal Service marked either "return to sender; moved left no address; unable to forward," or "forwarding order expired." The August 12 letter, which was sent to both addresses by first class mail, was also returned marked the same way. The Respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Minnesota corporation with a principal office and place of business located at 3701 Shoreline Drive, Wayzata, Minnesota, has been engaged as a contractor in the commercial construction industry.

During the 12-month period ending March 31, 2003, a representative period, the Respondent, in conducting its business operations described above, performed services valued in excess of \$50,000 within the State of Minnesota for Weis Builders, Inc.

During the same period described above, Weis Builders, Inc., a Minnesota corporation engaged as a general contractor in the construction industry with offices located in Minneapolis and Rochester, Minnesota, San Diego, California, and Chicago, Illinois, sold goods and services valued in excess of \$50,000 directly to customers located outside the State of Minnesota and purchased goods and services valued in excess of \$50,000 directly from suppliers located outside the State of Minnesota.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Carpenters Union Local 851 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, John Campbell has been the Respondent's owner and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

On about April 1, 2003, the Respondent discharged its employee Michelle L. Stumne-Rovick.

The Respondent engaged in the conduct described above because the named employee joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

**CONCLUSIONS OF LAW**

By the conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of their rights under Section 7 of the Act, and has discriminated in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act. The Respon-

the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB No. 36, slip op. at 1 fn. 2 (2003), and cases cited there; *National Automatic Sprinklers, Inc.*, 307 NLRB 481 fn. 1 (1992).

dent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (3) of the Act by discharging Michelle L. Stumne-Rovick, we shall order the Respondent to offer her full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make Stumne-Rovick whole for any loss of earnings and other benefits suffered as a result of the discrimination against her. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharge, and to notify Stumne-Rovick in writing that this has been done.

#### ORDER

The National Labor Relations Board orders that the Respondent, Jet-R Construction, Inc., Wayzata, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they support Carpenters Union Local 851 or any other labor organization or engage in protected concerted activities, or to discourage employees from engaging in such activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Michelle Stumne-Rovick full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Michelle Stumne-Rovick whole for any loss of earnings and other benefits suffered as a result of her unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful discharge of Michelle Stumne-Rovick, and within 3 days thereafter, notify her in writing that this has been done,

and that the discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Wayzata, Minnesota, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 1, 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 26, 2003

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Robert J. Battista, Chairman

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Wilma B. Liebman, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against our employees because they support Carpenters Union Local 851 or any other labor organization or en-

gage in protected concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer Michelle Stumne-Rovick full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Michelle Stumne-Rovick whole for any loss of earnings and other benefits suffered as a result of her unlawful discharge, with interest.

WE WILL within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharge of Michelle Stumne-Rovick, and WE WILL within 3 days thereafter, notify her in writing that this has been done, and that the discharge will not be used against her in any way.

JET-R CONSTRUCTION, INC.